

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**DEMARIO S. CANNON
ADC #155021**

PLAINTIFF

v.

Case No. 3:21-cv-00037 KGB

**KEITH BOWERS, Captain
Craighead County Detention Center, *et al.***

DEFENDANTS

ORDER

Before the Court is the Recommended Disposition (“Recommendation”) submitted by United States Magistrate Judge Joe J. Volpe (Dkt. No. 60). Also before the Court is plaintiff Demario Cannon’s motion to reopen the case and file for a 14-day extension to be granted for permission to file summary judgment (Dkt. No. 61). For the following reasons, the Court grants Mr. Cannon’s motion (Dkt. No. 61) and has under advisement Judge Volpe’s Recommendation (Dkt. No. 60).

I. Background

Mr. Cannon filed a *pro se* amended complaint pursuant to 42 U.S.C. § 1983 based on alleged violations of his constitutional rights while he was in the Craighead County Detention Center (Dkt. No. 14). He brings these claims based on his contracting COVID-19 (*Id.*). The Court addresses briefly the background of this case to understand the procedural posture and to assess Judge Volpe’s pending Recommendation and Mr. Cannon’s pending motion.

Judge Volpe, to whom this case is referred for all pretrial matters, issued an initial scheduling order that set the discovery deadline for November 9, 2022, and the deadline to file dispositive motions, also referred to as motions for summary judgment, for December 9, 2022 (Dkt. No. 38). Defendant Nurse Chassity Hall filed a motion to extend the discovery and

dispositive motions deadline, and the remaining defendants joined in this request (Dkt. No. 45). Judge Volpe granted the request and reset the discovery deadline for January 9, 2023, and the dispositive motions deadline for February 9, 2023 (Dkt. No. 46).

On February 7, 2023, separate defendants Sheriff Marty Boyd, Corporal Hall, Captain Keith Bowers, and Ty Frazier, in their individual and official capacities, filed a motion for summary judgment (Dkt. No. 49). On February 9, 2023, separate defendants Licensed Practical Nurses Hall and Heather Madden filed a motion for summary judgment (Dkt. No. 52).

On March 9, 2023, Judge Volpe entered two decisions (Dkt. Nos. 55; 56). First, he entered an order that permitted defendants Boyd, Hall, Bowers, and Frazier to file a supplemental brief in support of their motion for summary judgment on or before April 10, 2023, and extended to April 24, 2023, Mr. Cannon's time to respond to that motion (Dkt. No. 55, at 4). Second, as Mr. Cannon's time to respond to defendants Hall and Madden's motion for summary judgment had elapsed without response, Judge Volpe entered a Partial Recommended Disposition recommending that defendants Hall and Madden's motion for summary judgment be granted and that Mr. Cannon's claims against them be dismissed with prejudice (Dkt. No. 56). Mr. Cannon did not object to Judge Volpe's Partial Recommended Disposition. This Court adopted that Partial Recommended Disposition and dismissed with prejudice Mr. Cannon's claims against defendants Hall and Madden (Dkt. No. 58).

On March 14, defendants Boyd, Hall, Bowers and Frazier filed a supplemental brief in support of their motion for summary judgment (Dkt. No. 57). Mr. Cannon again did not respond, either to their original motion for summary judgment or to their supplemental motion for summary judgment. On May 5, 2023, Judge Volpe issued the pending Recommendation, recommending among other matters that this Court dismiss with prejudice Mr. Cannon's claims against defendants

Boyd, Hall, Bowers, and Frazier (Dkt. No. 60). Mr. Cannon did not timely object to Judge Volpe's Recommendation.

Then, on June 9, 2023, Mr. Cannon filed his pending motion to reopen the case and for an extension of time to respond (Dkt. No. 61). Mr. Cannon contends that he was placed in solitary confinement around April 25, 2023, at the Benton Work Release and then transferred to the Arkansas Department of Correction ("ADC") Cummins Unit where he also was placed in solitary confinement (*Id.*, at 1). Mr. Cannon contends that "ADC Cummins Unit authorities" have sabotaged, interfered with, and intentionally held his legal mail, preventing him from working on his case (*Id.*, at 1-2). Mr. Cannon also maintains that he had not received any legal work until the week before he filed his motion on June 6, 2023 (*Id.*, at 1).

Based upon Mr. Cannon's representations in his motion, for good cause shown, the Court grants Mr. Cannon's motion (Dkt. No. 61). The Court grants an additional 30 days from the entry of this Order for Mr. Cannon to file:

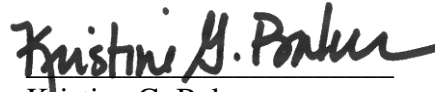
(1) A response to the motion for summary judgment and supplemental brief in support of the motion for summary judgment filed by separate defendants Sheriff Marty Boyd, Corporal Hall, Captain Keith Bowers, and Ty Frazier, in their individual and official capacities (Dkt. Nos. 49; 57) and/or an objection to Judge Volpe's pending Recommendation, recommending among other matters that this Court dismiss with prejudice Mr. Cannon's claims against defendants Boyd, Hall, Bowers, and Frazier (Dkt. No. 60).

(2) A motion for this Court to reconsider the Order (Dkt. No. 58) this Court entered granting separate defendants Licensed Practical Nurses Hall and Heather Madden's motion for summary judgment (Dkt. No. 52) by adopting Judge Volpe's Partial Recommended Disposition

recommending that defendants Hall and Madden's motion for summary judgment be granted and that Mr. Cannon's claims against them be dismissed with prejudice (Dkt. No. 56).

The Court directs the Clerk to send to Mr. Cannon a copy of the docket sheet in this case, along with copies of the following docket entries: 49, 50, 51, 52, 53, 54, 56, 57, 58, and 60.

It is so ordered this the 27th day of September, 2023.


Kristine G. Baker
United States District Judge